



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of
the Request for Opinion Concerning
the Conduct of BOB LOUX,
Executive Director,
Office of Nuclear Projects,
State of Nevada,

Request for Opinion No.: 08-57C

Subject. /

EXECUTIVE DIRECTOR'S APPROVAL OF INVESTIGATOR'S REPORT
AND EXECUTIVE DIRECTOR'S RECOMMENDATION
(Tab 1)

The following is the Executive Director's recommendation based on the Investigator's investigation.

An Ethics Complaint was filed against Director of the Nuclear Projects Office BOB LOUX alleging that he used his position to obtain unwarranted privileges or advantages for himself and for persons to whom he has commitments in a private capacity to those persons, in violation of Nevada Revised Statutes (NRS) 281A.400.2 by giving himself and his employees unauthorized pay raises in 2007 and 2008.

The Investigator sent LOUX a notice regarding additional allegations from 2006 concerning his and his employees' pay raises and on his use of a subordinate to obtain a pay raise for his financial benefit.

Issue or issues:

The first issue before the panel is whether LOUX violated Nevada Revised Statutes (NRS) 281A.400.2 by using his position to approve and thereby receive pay raises for himself and his employees that exceed the legislative approved amounts in fiscal years of 2006, 2007 and 2008. The panel must determine whether a subordinate of LOUX's constitutes a substantial and continuous business relationship or a relationship that is substantially similar to such a relationship. If the panel finds just and sufficient cause exists for the Commission to render an opinion on whether LOUX violated the ethics law, the panel is not required to determine the amount of money that LOUX and his employees received in excess of the legislatively approved salary amounts.

The second issue before the panel is whether LOUX violated NRS 281A.400.9 by using a subordinate to obtain pay raises for himself and his employees that exceed the legislative approved amounts in fiscal years of 2006, 2007 and 2008.

Nevada Revised Statutes (NRS) and case law:

The applicable statutes are NRS 281A.400.2 and NRS 281A.400.9. Pursuant to NRS 281A.400.2, LOUX may not use his position as Director to secure an unwarranted privilege or advantage for himself or any person to whom he has a commitment in a private capacity to that person. Under NRS 281A.400.2 (b), “unwarranted” means without adequate reason or justification. A “commitment in a private capacity to the interests of others” means a commitment to a person: (a) who is a member of his household; (b) who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity; (c) who employs him or a member of his household; (d) with whom he has a substantial and continuing business relationship; or (e) any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection. NRS 281A.420.8.

The Nevada Supreme Court in the Oscar Goodman case, No. 47165, interpreted the phrase “used his position in government.” (Tab 2, attached hereto). The court relied on Webster’s dictionary to define the word “use.” The term means the act or practice of employing something. The court reasoned that other states generally found ethical violations by public officials where the officials bribed, threatened a party, or where the officials expended public funds.

Recommendation:

After reviewing the evidence and Nevada Revised Statutes (NRS) 281A.400.2, the recommendation is that the Panel find just and sufficient cause exists for the Commission to render an opinion on allegations that LOUX used his position as Director to secure unwarranted pay raises for himself and his employees in 2006, 2007 and 2008.

Further, the recommendation is that the Panel find just and sufficient cause exists for the Commission to render an opinion on the allegations that LOUX used his position as Director to influence a subordinate (Cathy Sack) to obtain his unauthorized pay raises in 2006, 2007 and 2008.

Analysis and Recommendation on each allegation:

Each allegation of a violation is analyzed as follows:

1) Did LOUX violate NRS 281A.400.2 when he allegedly gave himself a pay raise in 2006 that was not authorized by the Legislature?

In fiscal year 2006, LOUX approved and took a pay raise above the legislatively approved salary for his position. Panel Book, Tab F, Exhibit 10. The legislatively approved salary was \$104,497. In addition, LOUX signed his own Employment Status Maintenance Transaction (ESMT) sheet changing his retirement benefit from employer/employee paid which should have reduce his salary below the \$104,497 amount. When he signed, he stated that the document was correct, complete and in agreement with state law and regulations. (Tab 3, attached hereto).

NRS 281A.400.2 (b) prohibits a public officer from using his position to secure an unwarranted advantage for himself. LOUX was paid \$120,537 in fiscal year 2006.

LOUX held the Director’s position since 1985; he clearly is familiar with the state budget

approval process, state personnel rules and his budget including the salary amounts for each position in his agency. Agency directors submit their budgets to the governor and testify on their budgets at the legislature. Every agency receives weekly, bimonthly and monthly budget and payroll reports during the fiscal year. LOUX knew or should have known the amount of his legislatively approved salary and knew what he was being paid. Moreover, he knew that his salary would be reduced when he signed the ESMT sheet changing his retirement payment reducing his legislatively approved salary amount.

Therefore, the recommendation is that the Panel find that just and sufficient cause **EXISTS** for the Commission to render an opinion on whether LOUX violated NRS 281A.400.2 by paying himself a salary above the amount in the legislatively approved budget for fiscal year 2006.

2) Did LOUX violate NRS 281A.400.2 when he allegedly gave himself a pay raise in 2007 that was not authorized by the Legislature?

In fiscal year 2007, LOUX approved and took a pay raise above the legislatively approved salary for his position. The legislatively approved salary was \$108,677 and he was paid \$125,355. Panel Book, Tab F, Exhibit 10.

NRS 281A.400.2 (b) prohibits a public officer from using his position to secure an unwarranted advantage for himself. As the appointing authority signature, LOUX signed his own ESMT sheet stating that the document was correct, complete and in agreement with state law and regulations. Panel Book, Tab B. LOUX held the Director's position since 1985; he clearly is familiar with the state budget approval process, state personnel rules and his budget including the salary amounts for each positioning his agency. Agency directors submit their budgets to the governor and testify on their budgets at the legislature. Every agency receives weekly, bimonthly and monthly budget reports during the fiscal year. LOUX knew or should have known the amount of his legislatively approved salary when he signed the ESMT sheet giving himself more than the approved amount.

Therefore, the recommendation is that the Panel find that just and sufficient cause **EXISTS** for the Commission to render an opinion on whether LOUX violated NRS 281A.400.2 by paying himself a salary above the amount in the legislatively approved budget for fiscal year 2007.

3) Did LOUX violate NRS 281A.400.2 when he allegedly gave himself a pay raise in 2008 that was not authorized by the Legislature?

In fiscal year 2008, LOUX approved and took a pay raise above the legislatively approved salary for his position. The legislatively approved salary was \$114,088 and he was paid \$145,718. Panel Book, Tab F, Exhibit 10.

NRS 281A.400.2 (b) prohibits a public officer from using his position to secure an unwarranted advantage for himself. As the appointing authority signature, LOUX signed his own ESMT sheet stating that the document was correct, complete and in agreement with state law and regulations. Panel Book, Tab B.

LOUX held the Director's position since 1985; he clearly is familiar with the state budget approval process, state personnel rules and his budget including the salary amounts for each position in his agency. Agency directors submit their budgets to the governor and testify on their budgets at the legislature. Every agency receives weekly, bimonthly and monthly budget reports during the fiscal year. LOUX knew or should have known the amount of his legislatively approved salary when he signed the ESMT sheet giving himself more than the approved amount.

Therefore, the recommendation is that the Panel find that just and sufficient cause

EXISTS for the Commission to render an opinion on whether LOUX violated NRS 281A.400.2 by paying himself a salary above the amount in the legislatively approved budget for fiscal year 2008.

4) Did LOUX violate NRS 281A.400.2 when he allegedly gave pay raises to his employees in 2006 that were not authorized by the Legislature?

In fiscal year 2006, LOUX approved and gave pay raises to his six employees in an amount above the legislatively approved amount in the agency's budget. The approved salaries for the agency totaled \$578,474, including LOUX's salary of \$104,497 and the employees were paid a total of \$617,003, including LOUX's salary of \$120,537. The total amount of the unauthorized salary increases was \$38,529. The employees were paid \$22,489 more than the legislatively approved budget for their salaries. Panel Book, Tab F, Exhibit 10.

NRS 281A.400.2 (b) prohibits a public officer from using his position to secure an unwarranted advantage for a person to whom he has a commitment in a private capacity to that person. As the appointing authority signature, LOUX signed each employee's ESMT sheet stating that the document was correct, complete and in agreement with state law and regulations. Panel Book, Tab B.

LOUX held the Director's position since 1985; he clearly is familiar with the state budget approval process, state personnel rules and his budget including the salary amounts for each position in his agency. Agency directors submit their budgets to the governor and testify on their budgets at the legislature. Every agency receives weekly, bimonthly and monthly budget reports during the fiscal year. LOUX knew or should have known the amount of his employees' legislatively approved salaries when he signed the ESMT sheets giving each of them a salary above the approved amount.

Therefore, the recommendation is that the Panel find that just and sufficient cause **EXISTS** for the Commission to render an opinion on whether LOUX violated NRS 281A.400.2 in fiscal year 2006 by granting his employees more than \$22,489 in pay raises that were not approved by the legislature.

5) Did LOUX violate NRS 281A.400.2 when he allegedly gave pay raises to his employees in 2007 that were not authorized by the Legislature?

In fiscal year 2007, LOUX approved and gave pay raises to his six employees in an amount above the legislatively approved amount in the agency's budget. The approved salaries for the agency totaled \$601,612, including LOUX's salary of \$108,677 and the employees were paid a total of \$641,574, including LOUX's salary of \$125,355. The total amount of the unauthorized salary increases was \$39,962. The employees were paid \$23,284 more than the legislatively approved budget for their salaries. Panel Book, Tab F, Exhibit 10.

NRS 281A.400.2 (b) prohibits a public officer from using his position to secure an unwarranted advantage for a person to whom he has a commitment in a private capacity to that person. As the appointing authority signature, LOUX signed each employee's ESMT sheet stating that the document was correct, complete and in agreement with state law and regulations. Panel Book, Tab B.

LOUX held the Director's position since 1985; he clearly is familiar with the state budget approval process, state personnel rules and his budget including the salary amounts for each position in his agency. Agency directors submit their budgets to the governor and testify on their budgets at the legislature. Every agency receives weekly, bimonthly and monthly budget reports during the fiscal year. LOUX knew or should have known the amount of his employees' legislatively approved salaries when he signed the ESMT sheets giving each of them a salary

above the approved amount.

Therefore, the recommendation is that the Panel find that just and sufficient cause **EXISTS** for the Commission to render an opinion on whether LOUX violated NRS 281A.400.2 in fiscal year 2007 by granting his employees more than \$23,284 in pay raises that were not approved by the legislature.

6) Did LOUX violate NRS 281A.400.2 when he allegedly gave pay raises to his employees in 2008 that were not authorized by the Legislature?

In fiscal year 2008, LOUX approved and gave pay raises to his six employees in an amount above the legislatively approved amount in the agency's budget. The approved salaries for the agency totaled \$583,908, including LOUX's salary of \$1114,088 and the employees were paid a total of \$654,326, including LOUX's salary of \$145,718. The total amount of the unauthorized salary increases was \$70,418. The employees were paid \$38,788 more than the legislatively approved budget for their salaries. Panel Book, Tab F, Exhibit 10.

NRS 281A.400.2 (b) prohibits a public officer from using his position to secure an unwarranted advantage for a person to whom he has a commitment in a private capacity to that person. As the appointing authority signature, LOUX signed each employee's ESMT sheet stating that the document was correct, complete and in agreement with state law and regulations. Panel Book, Tab B.

LOUX held the Director's position since 1985; he clearly is familiar with the state budget approval process, state personnel rules and his budget including the salary amounts for each position in his agency. Agency directors submit their budgets to the governor and testify on their budgets at the legislature. Every agency receives weekly, bimonthly and monthly budget reports during the fiscal year. LOUX knew or should have known the amount of his employees legislatively approved salaries when he signed the ESMT sheets giving each of them a salary above the approved amount.

Therefore, the recommendation is that the Panel find that just and sufficient cause **EXISTS** for the Commission to render an opinion on whether LOUX violated NRS 281A.400.2 in fiscal year 2008 by granting his employees more than \$38,788 in pay raises that were not approved by the legislature.

7) Did LOUX violate NRS 281A.400.9 when he allegedly used an employee to authorize his pay raises in 2006, 2007 and 2008 that were not authorized by the Legislature?

In 2006, 2007 and 2008, LOUX submitted the paperwork to his Office Manager Cathy Sack (Sack) to certify the pay raises for himself and his six employees above the legislatively approved amounts in the agency's budget. Sack signed all the ESMT sheets certifying they were correct. Panel Book, Tab B.

NRS 281A.400.9 prohibits a public officer from attempting to benefit his financial interests through the influence of a subordinate. According to Cynthia Willden in State Personnel, she would not have approved any ESMT documents for his agency for pay increases without the second signature of Sack.


Therefore, the recommendation is that the Panel find just and sufficient cause **EXISTS** for the Commission to render an opinion on whether LOUX violated NRS 281A.400.9 on using Sack to certify the pay raises in 2006, 2007 and 2008. \

//
/

Conclusion:

The Recommendation is that the Panel find just and sufficient cause **EXISTS** for the Commission render an opinion on all of the above allegations against LOUX.

Approval of Investigator's Report and Executive Director's Recommendation:



Patricia D. Cafferata, Esq.
Executive Director

Dated: November 7, 2008